

AMENDMENT TO THE RULES COMMITTEE PRINT

117-54

OFFERED BY MRS. BEATTY OF OHIO

At the end title LIV add the following:

1 **SEC. 54 ____ . FAIR HIRING IN BANKING.**

2 (a) FEDERAL DEPOSIT INSURANCE ACT.—Section
3 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829)
4 is amended—

5 (1) by inserting after subsection (b) the fol-
6 lowing:

7 “(c) EXCEPTIONS.—

8 “(1) CERTAIN OLDER OFFENSES.—

9 “(A) IN GENERAL.—With respect to an in-
10 dividual, subsection (a) shall not apply to an of-
11 fense if—

12 “(i) it has been 7 years or more since
13 the offense occurred; or

14 “(ii) the individual was incarcerated
15 with respect to the offense and it has been
16 5 years or more since the individual was
17 released from incarceration.

18 “(B) OFFENSES COMMITTED BY INDIVID-
19 UALS 21 OR YOUNGER.—For individuals who

1 committed an offense when they were 21 years
2 of age or younger, subsection (a) shall not
3 apply to the offense if it has been more than 30
4 months since the sentencing occurred.

5 “(C) LIMITATION.—This paragraph shall
6 not apply to an offense described under sub-
7 section (a)(2).

8 “(2) EXPUNGEMENT AND SEALING.—With re-
9 spect to an individual, subsection (a) shall not apply
10 to an offense if—

11 “(A) there is an order of expungement,
12 sealing, or dismissal that has been issued in re-
13 gard to the conviction in connection with such
14 offense; and

15 “(B) it is intended by the language in the
16 order itself, or in the legislative provisions
17 under which the order was issued, that the con-
18 viction shall be destroyed or sealed from the in-
19 dividual’s State or Federal record, even if ex-
20 ceptions allow the record to be considered for
21 certain character and fitness evaluation pur-
22 poses.

23 “(3) DE MINIMIS EXEMPTION.—

1 “(A) IN GENERAL.—Subsection (a) shall
2 not apply to such de minimis offenses as the
3 Corporation determines, by rule.

4 “(B) CONFINEMENT CRITERIA.—In issuing
5 rules under subparagraph (A), the Corporation
6 shall include a requirement that the offense was
7 punishable by a term of three years or less con-
8 fined in a correctional facility, where such con-
9 finement—

10 “(i) is calculated based on the time an
11 individual spent incarcerated as a punish-
12 ment or a sanction, not as pretrial deten-
13 tion; and

14 “(ii) does not include probation or pa-
15 role where an individual was restricted to
16 a particular jurisdiction or was required to
17 report occasionally to an individual or a
18 specific location.

19 “(C) BAD CHECK CRITERIA.—In setting
20 the criteria for de minimis offenses under sub-
21 paragraph (A), if the Corporation establishes
22 criteria with respect to insufficient funds
23 checks, the Corporation shall require that the
24 aggregate total face value of all insufficient
25 funds checks across all convictions or program

1 entries related to insufficient funds checks is
2 \$2,000 or less.

3 “(D) DESIGNATED LESSER OFFENSES.—
4 Subsection (a) shall not apply to certain lesser
5 offenses (including the use of a fake ID, shop-
6 lifting, trespass, fare evasion, driving with an
7 expired license or tag, and such other low-risk
8 offenses as the Corporation may designate) if 1
9 year or more has passed since the applicable
10 conviction or program entry.”; and

11 (2) by adding at the end the following:

12 “(f) CONSENT APPLICATIONS.—

13 “(1) IN GENERAL.—The Corporation shall ac-
14 cept consent applications from an individual and
15 from an insured depository institution or depository
16 institution holding company on behalf of an indi-
17 vidual that are filed separately or contemporaneously
18 with a regional office of the Corporation.

19 “(2) SPONSORED APPLICATIONS FILED WITH
20 REGIONAL OFFICES.—Consent applications filed at a
21 regional office of the Corporation by an insured de-
22 pository institution or depository institution holding
23 company on behalf of an individual—

24 “(A) shall be reviewed by such office;

1 “(B) may be approved or denied by such
2 office, if such authority has been delegated to
3 such office by the Corporation; and

4 “(C) may only be denied by such office if
5 the general counsel of the Corporation (or a
6 designee) certifies that the denial is consistent
7 with this section.

8 “(3) INDIVIDUAL APPLICATIONS FILED WITH
9 REGIONAL OFFICES.—Consent applications filed at a
10 regional office by an individual—

11 “(A) shall be reviewed by such office; and

12 “(B) may be approved or denied by such
13 office, if such authority has been delegated to
14 such office by the Corporation, except with re-
15 spect to—

16 “(i) cases involving an offense de-
17 scribed under subsection (a)(2); and

18 “(ii) such other high-level security
19 cases as may be designated by the Cor-
20 poration.

21 “(4) NATIONAL OFFICE REVIEW.—The national
22 office of the Corporation shall—

23 “(A) review any consent application with
24 respect to which a regional office is not author-
25 ized to approve or deny the application; and

1 “(B) review any consent application that is
2 denied by a regional office, if the individual re-
3 quests a review by the national office.

4 “(5) FORMS AND INSTRUCTIONS.—

5 “(A) AVAILABILITY.—The Corporation
6 shall make all forms and instructions related to
7 consent applications available to the public, in-
8 cluding on the website of the Corporation.

9 “(B) CONTENTS.—The forms and instruc-
10 tions described under subparagraph (A) shall
11 provide a sample cover letter and a comprehen-
12 sive list of items that may accompany the appli-
13 cation, including clear guidance on evidence
14 that may support a finding of rehabilitation.

15 “(6) CONSIDERATION OF CRIMINAL HISTORY.—

16 “(A) REGIONAL OFFICE CONSIDER-
17 ATION.—In reviewing a consent application, a
18 regional office shall—

19 “(i) primarily rely on the criminal his-
20 tory record of the Federal Bureau of In-
21 vestigation; and

22 “(ii) provide such record to the appli-
23 cant to review for accuracy.

24 “(B) CERTIFIED COPIES.—The Corpora-
25 tion may not require an applicant to provide

1 certified copies of criminal history records un-
2 less the Corporation determines that there is a
3 clear and compelling justification to require ad-
4 ditional information to verify the accuracy of
5 the criminal history record of the Federal Bu-
6 reau of Investigation.

7 “(7) CONSIDERATION OF REHABILITATION.—
8 Consistent with title VII of the Civil Rights Act of
9 1964 (42 U.S.C. 2000e et seq.), the Corporation
10 shall—

11 “(A) conduct an individualized assessment
12 when evaluating consent applications that takes
13 into account evidence of rehabilitation, the ap-
14 plicant’s age at the time of the conviction or
15 program entry, the time that has elapsed since
16 conviction or program entry, and the relation-
17 ship of individual’s offense to the responsibil-
18 ities of the applicable position;

19 “(B) consider the individual’s employment
20 history, letters of recommendation, certificates
21 documenting participation in substance abuse
22 programs, successful participating in job prepa-
23 ration and educational programs, and other rel-
24 evant mitigating evidence; and

1 “(C) consider any additional information
2 the Corporation determines necessary for safety
3 and soundness.

4 “(8) SCOPE OF EMPLOYMENT.—With respect to
5 an approved consent application filed by an insured
6 depository institution or depository institution hold-
7 ing company on behalf of an individual, if the Cor-
8 poration determines it appropriate, such approved
9 consent application shall allow the individual to work
10 for the same employer (without restrictions on the
11 location) and across positions, except that the prior
12 consent of the Corporation (which may require a
13 new application) shall be required for any proposed
14 significant changes in the individual’s security-re-
15 lated duties or responsibilities, such as promotion to
16 an officer or other positions that the employer deter-
17 mines will require higher security screening creden-
18 tials.

19 “(9) COORDINATION WITH THE NCUA.—In car-
20 rying out this section, the Corporation shall consult
21 and coordinate with the National Credit Union Ad-
22 ministration as needed to promote consistent imple-
23 mentation where appropriate.

24 “(g) DEFINITIONS.—In this section:

1 “(1) CONSENT APPLICATION.—The term ‘con-
2 sent application’ means an application filed with
3 Corporation by an individual (or by an insured de-
4 pository institution or depository institution holding
5 company on behalf of an individual) seeking the
6 written consent of the Corporation under subsection
7 (a)(1).

8 “(2) CRIMINAL OFFENSE INVOLVING DISHON-
9 ESTY.—The term ‘criminal offense involving dishon-
10 esty’—

11 “(A) means an offense under which an in-
12 dividual, directly or indirectly—

13 “(i) cheats or defrauds; or

14 “(ii) wrongfully takes property belong-
15 ing to another in violation of a criminal
16 statute;

17 “(B) includes an offense that Federal,
18 State, or local law defines as dishonest, or for
19 which dishonesty is an element of the offense;
20 and

21 “(C) does not include—

22 “(i) a misdemeanor criminal offense
23 committed more than one year before the
24 date on which an individual files a consent

1 application, excluding any period of incar-
2 ceration; or

3 “(ii) an offense involving the posses-
4 sion of controlled substances.

5 “(3) PRETRIAL DIVERSION OR SIMILAR PRO-
6 GRAM.—The term ‘pretrial diversion or similar pro-
7 gram’ means a program characterized by a suspen-
8 sion or eventual dismissal or reversal of charges or
9 criminal prosecution upon agreement by the accused
10 to restitution, drug or alcohol rehabilitation, anger
11 management, or community service.”.

12 (b) FEDERAL CREDIT UNION ACT.—Section 205(d)
13 of the Federal Credit Union Act (12 U.S.C. 1785(d)) is
14 amended by adding at the end the following:

15 “(4) EXCEPTIONS.—

16 “(A) CERTAIN OLDER OFFENSES.—

17 “(i) IN GENERAL.—With respect to an
18 individual, paragraph (1) shall not apply to
19 an offense if—

20 “(I) it has been 7 years or more
21 since the offense occurred; or

22 “(II) the individual was incarcer-
23 ated with respect to the offense and it
24 has been 5 years or more since the in-

1 dividual was released from incarceration.
2 ation.

3 “(ii) OFFENSES COMMITTED BY INDIVIDUALS 21 OR YOUNGER.—For individuals
4 who committed an offense when they were
5 21 years of age or younger, paragraph (1)
6 shall not apply to the offense if it has been
7 more than 30 months since the sentencing
8 occurred.
9

10 “(iii) LIMITATION.—This subparagraph shall not apply to an offense described under paragraph (1)(B).
11
12

13 “(B) EXPUNGEMENT AND SEALING.—With
14 respect to an individual, paragraph (1) shall not
15 apply to an offense if—

16 “(i) there is an order of expungement,
17 sealing, or dismissal that has been issued
18 in regard to the conviction in connection
19 with such offense; and

20 “(ii) it is intended by the language in
21 the order itself, or in the legislative provisions under which the order was issued,
22 that the conviction shall be destroyed or
23 sealed from the individual’s State or Federal
24 record, even if exceptions allow the
25

1 record to be considered for certain char-
2 acter and fitness evaluation purposes.

3 “(C) DE MINIMIS EXEMPTION.—

4 “(i) IN GENERAL.—Paragraph (1)
5 shall not apply to such de minimis offenses
6 as the Board determines, by rule.

7 “(ii) CONFINEMENT CRITERIA.—In
8 issuing rules under clause (i), the Board
9 shall include a requirement that the of-
10 fense was punishable by a term of three
11 years or less confined in a correctional fa-
12 cility, where such confinement—

13 “(I) is calculated based on the
14 time an individual spent incarcerated
15 as a punishment or a sanction, not as
16 pretrial detention; and

17 “(II) does not include probation
18 or parole where an individual was re-
19 stricted to a particular jurisdiction or
20 was required to report occasionally to
21 an individual or a specific location.

22 “(iii) BAD CHECK CRITERIA.—In set-
23 ting the criteria for de minimis offenses
24 under clause (i), if the Board establishes
25 criteria with respect to insufficient funds

1 checks, the Board shall require that the
2 aggregate total face value of all insufficient
3 funds checks across all convictions or pro-
4 gram entries related to insufficient funds
5 checks is \$2,000 or less.

6 “(iv) DESIGNATED LESSER OF-
7 FENSES.—Paragraph (1) shall not apply to
8 certain lesser offenses (including the use of
9 a fake ID, shoplifting, trespass, fare eva-
10 sion, driving with an expired license or tag,
11 and such other low-risk offenses as the
12 Board may designate) if 1 year or more
13 has passed since the applicable conviction
14 or program entry.

15 “(5) CONSENT APPLICATIONS.—

16 “(A) IN GENERAL.—The Board shall ac-
17 cept consent applications from an individual
18 and from an insured credit union on behalf of
19 an individual that are filed separately or con-
20 temporaneously with a regional office of the
21 Board.

22 “(B) SPONSORED APPLICATIONS FILED
23 WITH REGIONAL OFFICES.—Consent applica-
24 tions filed at a regional office of the Board by

1 an insured credit union on behalf of an indi-
2 vidual—

3 “(i) shall be reviewed by such office;

4 “(ii) may be approved or denied by
5 such office, if such authority has been dele-
6 gated to such office by the Board; and

7 “(iii) may only be denied by such of-
8 fice if the general counsel of the Board (or
9 a designee) certifies that the denial is con-
10 sistent with this section.

11 “(C) INDIVIDUAL APPLICATIONS FILED
12 WITH REGIONAL OFFICES.—Consent applica-
13 tions filed at a regional office by an indi-
14 vidual—

15 “(i) shall be reviewed by such office;
16 and

17 “(ii) may be approved or denied by
18 such office, if such authority has been dele-
19 gated to such office by the Board, except
20 with respect to—

21 “(I) cases involving an offense
22 described under paragraph (1)(B);
23 and

1 “(II) such other high-level secu-
2 rity cases as may be designated by the
3 Board.

4 “(D) NATIONAL OFFICE REVIEW.—The
5 national office of the Board shall—

6 “(i) review any consent application
7 with respect to which a regional office is
8 not authorized to approve or deny the ap-
9 plication; and

10 “(ii) review any consent application
11 that is denied by a regional office, if the
12 individual requests a review by the national
13 office.

14 “(E) FORMS AND INSTRUCTIONS.—

15 “(i) AVAILABILITY.—The Board shall
16 make all forms and instructions related to
17 consent applications available to the public,
18 including on the website of the Board.

19 “(ii) CONTENTS.—The forms and in-
20 structions described under clause (i) shall
21 provide a sample cover letter and a com-
22 prehensive list of items that may accom-
23 pany the application, including clear guid-
24 ance on evidence that may support a find-
25 ing of rehabilitation.

1 “(F) CONSIDERATION OF CRIMINAL HIS-
2 TORY.—

3 “(i) REGIONAL OFFICE CONSIDER-
4 ATION.—In reviewing a consent applica-
5 tion, a regional office shall—

6 “(I) primarily rely on the crimi-
7 nal history record of the Federal Bu-
8 reau of Investigation; and

9 “(II) provide such record to the
10 applicant to review for accuracy.

11 “(ii) CERTIFIED COPIES.—The Board
12 may not require an applicant to provide
13 certified copies of criminal history records
14 unless the Board determines that there is
15 a clear and compelling justification to re-
16 quire additional information to verify the
17 accuracy of the criminal history record of
18 the Federal Bureau of Investigation.

19 “(G) CONSIDERATION OF REHABILITA-
20 TION.—Consistent with title VII of the Civil
21 Rights Act of 1964 (42 U.S.C. 2000e et seq.),
22 the Board shall—

23 “(i) conduct an individualized assess-
24 ment when evaluating consent applications
25 that takes into account evidence of reha-

1 bilitation, the applicant's age at the time
2 of the conviction or program entry, the
3 time that has elapsed since conviction or
4 program entry, and the relationship of in-
5 dividual's offense to the responsibilities of
6 the applicable position;

7 “(ii) consider the individual's employ-
8 ment history, letters of recommendation,
9 certificates documenting participation in
10 substance abuse programs, successful par-
11 ticipating in job preparation and edu-
12 cational programs, and other relevant miti-
13 gating evidence; and

14 “(iii) consider any additional informa-
15 tion the Board determines necessary for
16 safety and soundness.

17 “(H) SCOPE OF EMPLOYMENT.—With re-
18 spect to an approved consent application filed
19 by an insured credit union on behalf of an indi-
20 vidual, if the Board determines it appropriate,
21 such approved consent application shall allow
22 the individual to work for the same employer
23 (without restrictions on the location) and across
24 positions, except that the prior consent of the
25 Board (which may require a new application)

1 shall be required for any proposed significant
2 changes in the individual's security-related du-
3 ties or responsibilities, such as promotion to an
4 officer or other positions that the employer de-
5 termines will require higher security screening
6 credentials.

7 “(I) COORDINATION WITH FDIC.—In car-
8 rying out this subsection, the Board shall con-
9 sult and coordinate with the Federal Deposit
10 Insurance Corporation as needed to promote
11 consistent implementation where appropriate.

12 “(6) DEFINITIONS.—In this subsection:

13 “(A) CONSENT APPLICATION.—The term
14 ‘consent application’ means an application filed
15 with Board by an individual (or by an insured
16 credit union on behalf of an individual) seeking
17 the written consent of the Board under para-
18 graph (1)(A).

19 “(B) CRIMINAL OFFENSE INVOLVING DIS-
20 HONESTY.—The term ‘criminal offense involv-
21 ing dishonesty’—

22 “(i) means an offense under which an
23 individual, directly or indirectly—

24 “(I) cheats or defrauds; or

1 “(II) wrongfully takes property
2 belonging to another in violation of a
3 criminal statute;

4 “(ii) includes an offense that Federal,
5 State, or local law defines as dishonest, or
6 for which dishonesty is an element of the
7 offense; and

8 “(iii) does not include—

9 “(I) a misdemeanor criminal of-
10 fense committed more than one year
11 before the date on which an individual
12 files a consent application, excluding
13 any period of incarceration; or

14 “(II) an offense involving the
15 possession of controlled substances.

16 “(C) PRETRIAL DIVERSION OR SIMILAR
17 PROGRAM.—The term ‘pretrial diversion or
18 similar program’ means a program character-
19 ized by a suspension or eventual dismissal or
20 reversal of charges or criminal prosecution upon
21 agreement by the accused to restitution, drug
22 or alcohol rehabilitation, anger management, or
23 community service.”.

24 (c) REVIEW AND REPORT TO CONGRESS.—Not later
25 than the end of the 2-year period beginning on the date

1 of enactment of this Act, the Federal Deposit Insurance
2 Corporation and the National Credit Union Administra-
3 tion shall—

4 (1) review the rules issued to carry out this Act
5 and the amendments made by this Act on—

6 (A) the application of section 19 of the
7 Federal Deposit Insurance Act (12 U.S.C.
8 1829) and section 205(d) of the Federal Credit
9 Union Act (12 U.S.C. 1785(d));

10 (B) the number of applications for consent
11 applications under such sections; and

12 (C) the rates of approval and denial for
13 consent applications under such sections;

14 (2) make the results of the review required
15 under paragraph (1) available to the public; and

16 (3) issue a report to Congress containing any
17 legislative or regulatory recommendations for ex-
18 panding employment opportunities for those with a
19 previous minor criminal offense.

